

### 335.070-3

such, the amount of cost-sharing shall be proportional to the anticipated value of the contractor's gain.

(b) If the performing organization will not acquire title to, or the right to use, inventions, patents, or technical information resulting from the R & D project, it is normally appropriate to obtain less cost-sharing than in cases in which the performer acquires these rights.

(c) A fee or profit is not normally paid to the performing organization, if the organization is to contribute to the cost of the R & D effort, but the amount of cost-sharing may be reduced to reflect the fact that the organization is foregoing its normal fee or profit in the research. However, if the R & D is expected to be of only minor value to the performing organization, and if a statute does not require cost-sharing, it may be appropriate for the performer to make a contribution in the form of a reduced fee or profit rather than sharing costs of the project.

(d) The organization's participation may be considered over the total term of the project, so that a relatively high contribution in one year may be offset by a relatively low contribution in another.

(e) A relatively low degree of cost-sharing may be appropriate, if an area of R & D requires special stimulus in the national interest.

### 335.070-3 Method of cost sharing.

Cost-sharing on individual contracts may be accomplished either by a contribution of part or all of one or more elements of allowable cost of the work being performed or by a fixed amount or stated percentage of the total allowable costs of the project. Contractors shall not charge costs contributed to the Government under any other instrument (e.g., grant or contract), including allocations to other instruments as part of any independent R & D program.

### 335.070-4 Contract award.

Consistent with HHS' objectives of competition and support of the small business program, Contracting Officers shall not award contracts solely on the basis of an organization's ability or willingness to cost-share. Contracting

### 48 CFR Ch. 3 (10-1-10 Edition)

Officers shall make awards primarily on the contractor's competence and only after adequate competition has been obtained among large and small business organizations, whenever possible. An offeror's willingness to share costs is not a technical evaluation consideration, but a business consideration, which is secondary to selecting the best qualified source.

### 335.071 Special determinations and findings affecting research and development contracting.

OPDIV heads shall sign individual and class D & Fs for—

(a) Acquisition or construction of equipment or facilities on property not owned by the United States pursuant to 42 U.S.C. 241(a)(7); and

(b) Use of an indemnification provision in an R & D contract pursuant to 42 U.S.C. 241(a)(7).

## PART 337—SERVICE CONTRACTING—GENERAL

### Subpart 337.1—Service Contracts—General

Sec.

337.103-70 Solicitation provisions and contract clauses.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 74 FR 62398, Nov. 27, 2009, unless otherwise noted.

### Subpart 337.1—Service Contracts—General

### 337.103-70 Solicitation provisions and contract clauses.

(a) The Contracting Officer shall insert the clause in 352.237-70, Pro-Children Act, in solicitations, contracts, and orders that involve (a) kindergarten, elementary, or secondary education or library services or (b) health or daycare services that are provided to children under the age of 18 on a routine or regular basis pursuant to the Pro-Children Act of 1994.

(b) The Contracting Officer shall insert the clause in 352.237-71, Crime Control Act—Reporting of Child Abuse, in solicitations, contracts, and orders that require performance on Federal